

REMARKS

Claims 1-12, 14-16, and 21 will be pending upon entry of the present amendment. Claims 1 and 16 are amended, claim 13 is withdrawn, claims 17-20 are canceled, and claim 21 is newly submitted.

Applicant thanks the Examiner for indicating the allowability of the subject matter of claims 2-7 and 14.

The Examiner has rejected claims 1, 8, 11, and 15 under 35 U.S.C. § 102(b) as being anticipated by Bell (U.S. 5,709,479), and also by Repko (U.S. 3,469,768). Claim 16 has been rejected under 35 U.S.C. § 102(b) as being anticipated by Maloney. Claims 1, 8, 11, and 15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Repko, and claims 9, 10, and 12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Maloney (U.S. 4,557,377) in view of Repko.

Claim 1 has been amended to incorporate subject matter similar to that of claim 14, which has been indicated by the Examiner as containing allowable subject matter. While claim 14, as currently pending, depends from claim 9, applicant is of the opinion that the limitation of claim 14 is sufficient to define over the cited art without the additional limitations of claim 9. Claim 1 now recites, inter alia,

a stiffener flap defined by an arcuate score line in the front panel adjacent to the first opening of the pouch, the stiffener flap configured to bend sharply inward at the score line to form a stiffened projection when the container is pressed inward at extreme ends of the first opening....

Bell fails to teach this limitation, and thus fails to anticipate each limitation of the claim. Claim 1 is thus allowable over Bell, together with dependent claims 8, 11, and 15.

Repko also fails to teach or suggest all the limitations of claim 1, and further, offers no motivation for combination with any other art for the purpose of teaching or suggesting the above cited limitation of claim 1. Claim 1, together with dependent claims 8, 11, and 15, is clearly allowable over Repko.

In rejecting claim 9, the Examiner relies on Maloney to teach or suggest all the limitations of claim 9 except for the limitation reciting the pressure sensitive strip, Applicant

respectfully traverses this position. Applicant believes that Maloney fails to teach or suggest all the remaining limitations of claim 9.

The Examiner has not cited particular passages or figures of Maloney as corresponding to respective limitations of claim 9. Accordingly, applicant respectfully requests that the Examiner indicate the features of Maloney (or Repko) considered to anticipate or suggest each limitation of claim 9.

Applicant notes, for example, that claim 9 recites a first opening defined by a portion of the edges of the front and back panels not joined together, and further recites a tear line positioned such that tearing along the line will create a second opening in the pouch. Applicant is unable to find any description in Maloney that can provide such a teaching or suggestion. Although Maloney shows a tear line as described in reference to Figure 11, which includes the perforations 353, the edges of the device are fully sealed around the entire perimeter, and so fail to provide a first opening as recited in claim 1. On the other hand, Maloney does not teach or suggest combining embodiments that do include an unsealed portion of the edges with a tear line or a tool pouch. Additionally, the perforation and straw features of Figure 11 cannot be combined with features of Maloney's other embodiments to teach or suggest all the limitations, because, according to the structures enabled by Maloney's specification, the features of the embodiment of Maloney's Figure 11 are mutually exclusive with the features found in other embodiments that would need to be incorporated in order to teach or suggest all the limitations of claim 9.

Claim 9 recites a tool pouch defined on four sides by a sealed region of the front and back panels, and a spreading tool positioned within the tool pouch. Referring again to Maloney's Figure 11, which is the only embodiment that shows a separate object associated with the bag, Maloney provides a straw 352, which is configured to be used either to drink the contents of the bag by sucking through the straw, or for use as a pourer (*see* column 8, lines 48-58). Maloney offers no teaching or suggestion that the straw 352 might function as a spreading tool or that a spreading tool might be substituted. A careful review of the text of Maloney shows that each of the embodiments is intended to be used for the measuring, mixing, and dispensing of liquids, especially beverages. Accordingly, there is no motivation to provide a spreading tool.

Finally, referring again to Figure 11, applicant notes that the top section 351 within which the straw 352 is positioned includes an unsealed region 349, while the tool pouch recited in applicant's claim 9 is defined on four sides by a sealed region.

The above described deficiencies of Maloney are not resolved by Repko, which fails to teach or suggest at least the features discussed above.

Clearly, Repko and Maloney, either singly or in any combination, fail to teach or suggest each and every limitation of claim 9, which is therefore allowable thereover. Dependent claims 10 and 12, together with claims 2-7 and 14, which were previously indicated by the Examiner as containing allowable subject matter, are allowable as depending from an allowable base claim.

Claim 16 has been amended to recite, in part, "a spout formed by *a feature* of the first pouch." This is a broadening amendment, and is considered by the applicant to read on any feature that, when the pouch is torn as provided for by the means for tearing, functions as a spout. Such features may include, for example, an extrusion or excursion of the pouch, a corner of the pouch, or a bottom region thereof. Support for this amendment may be found in the specification on page 5, lines 3-5.

Claim 16 has also been amended to recite "a tool, fully enclosed within the second pouch of the container." Maloney fails to teach this limitation of claim 16, and further, fails to teach a pouch having an open end, as recited by claim 16. Maloney's tool is only partially enclosed, and, at the point in the manufacturing process where Maloney's straw is enclosed even to that extent, the bag ceases to have an open end. Thus, even if Maloney's straw is fully enclosed, which is contrary to the applicant's opinion, the two limitations, a pouch having an open end, and a tool, fully enclosed within a separate pouch, never coexist in a common structure. Accordingly, claim 16 is allowable over Maloney.

While the scopes of claims 9 and 21 vary, claim 21 is allowable for many of the reasons submitted in support of the allowability of claim 9. New claim 21 is fully supported by the specification.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 10/600,498  
Reply to Office Action dated July 15, 2004

All of the claims remaining in the application are now clearly allowable.  
Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

A handwritten signature in black ink, appearing to read 'Harold H. Bennett', is written over a horizontal line.

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